

**SAN JOSÉ STATE UNIVERSITY
ONE WASHINGTON SQUARE
SAN JOSÉ, CA 95192**

S18-5, University Policy, Research, Scholarship, and Creative Activity: Advisor-Student Relationship, Sponsored Projects, and Proprietary and Confidential Information in RSCA

Legislative History:

At its meeting of March 12, 2018, the Academic Senate approved the following policy recommendation presented by Senator Schultz-Krohn for the Curriculum and Research Committee. This policy recommendation was first presented during AY 2016-2017, but the language about Non-Disclosure Agreements (NDA) needed revisions, so the policy was returned to the Curriculum and Research Committee during AY 2017-2018.

Rescinds: S94-8

**Signed and approved
by Mary A. Papazian, President,
San José State University on
April 3, 2018**

**University Policy
Research, Scholarship, and Creative Activity: Advisor-
Student Relationship, Sponsored Projects, and Proprietary
and Confidential Information in RSCA**

Rationale: There is need to update the University policy on Research, Scholarship, and Creative Activity (hereafter RSCA) in compliance with the [Integrated CSU Administrative Manual Section 11000](#). In addition, policies, procedures, and practices on campus have undergone significant changes in the last 20 years that necessitates an update to our RSCA policy.

RSCA at a university advances the frontiers of knowledge, keeps individuals energized and familiar with recent developments in their fields, and provides an experiential learning context for students. These activities enrich a university community, contribute to knowledge and progress in the profession, and contribute to high-quality education. San José State University (SJSU) endorses the principles of academic freedom in RSCA and the University promotes conditions of free inquiry as outlined in SJSU University Policy S99-8. We re-affirm S94-8, that SJSU supports RSCA activity and the pursuit of research in concert with other university duties. All RSCA undertaken by SJSU personnel and students must be in compliance with all federal, state, CSU, and SJSU laws, regulations, and policies (contact Office of Research for guidance on laws, regulations, and policies). RSCA is defined by the discipline and may be further elaborated on within departments and colleges. RSCA typically excludes individual consulting or individual private business ventures.

Whereas: RSCA at SJSU includes a wide range of activities, funding approaches, disciplines, and practices, this policy covers only three aspects of RSCA: I. The RSCA Advisor - Student Relationship; II. Sponsored Projects; and III. Proprietary and Confidential Information in RSCA¹;

Whereas: Tenure/Tenure Track (T/TT) faculty are expected to engage in RSCA as indicated by the appointment process; this policy does not preclude others from engaging in RSCA; therefore be it

Resolved: That this policy recommendation be adopted to guide the above mentioned three aspects of RSCA activities.

¹ See Table 1 for list of other University Policies relating to RSCA.

Approved (C&R): March 5, 2018

Vote: 12-0-0

Present: Anagnos, Bacich, Buzanski, Cargill, Chung, De Guzman, Heil, Jensen, Stacks, Rodan, Trulio, Schultz-Krohn

Absent: Matoush

Curricular Impact: None anticipated.

Workload Impact: There is potential for University personnel to expand their grant and funding opportunities

Financial Impact: The Office of Research may have increased workload as University personnel contact them for guidance in conducting RSCA, proprietary research and confidential research.

I. The RSCA Advisor- Student Relationship

The involvement of students as active participants in RSCA projects provides students with richly rewarding, and often unique, learning opportunities, and the University encourages student involvement in RSCA. Thus, one of the criteria that may positively influence the decision to undertake RSCA projects or to accept extramural support is the potential to enrich the quality of the student learning experience. The University thus adopts the following policy governing the RSCA Advisor - Student Relationship:

A. RSCA Advisor Role

When bringing students into a RSCA project as collaborators, the advisor should encourage the free pursuit of learning, should show respect for the student as an individual, act as an intellectual guide and advisor/mentor, and provide oversight of the student to ensure that applicable laws and university policies are followed such as IRB, animal care and welfare, and responsible conduct of research

B. Alignment of Commitments and Obligations

Prior to bringing a student into a RSCA project, the advisor and the student should discuss time constraints and commitments and establish their respective responsibilities, make clear any obligations to third parties, and discuss possible implications of research misconduct. In some cases, the advisor and student may face conflicts when there are simultaneous academic and RSCA obligations for the student or competing commitments/obligations or third-party involvement that may impact the advisor's role as a teacher, mentor, or supervisor of RSCA. In these cases, the RSCA advisor and/or the student should contact the department chair (or associate dean if the chair is the RSCA advisor) for guidance. The ultimate goal is to establish a clearly defined relationship between all parties and establish a quality educational experience.

C. Financial Support

The University affirms the student's right to know the source(s) of the RSCA funding. Should a student choose to reject financial assistance linked to the source, the student has the right to do so without adverse consequences.

D. Recognition

Significant scholarly or artistic contributions from students must be acknowledged by the RSCA advisor. Prior to bringing students into a RSCA project, the RSCA advisor must discuss what is meant by significant contributions within the discipline.

II. Sponsored Projects

Sponsored projects are funded activities in which there is a formal written agreement (i.e., grant, contract, or cooperative agreement) between an institution and an external sponsor, and may be thought of as a transaction in which there is a specified statement of work with a related, reciprocal transfer of something of value. An externally-funded sponsored project is an agreement between SJSU and an external sponsor; such agreements are enforceable by law and performance is usually accomplished under time and fund use constraints with the transfer of support revocable for cause.

The University adopts the following guidelines governing sponsored projects:

A. Oversight of Sponsored Projects

With respect to externally-funded sponsored projects, the policies in [Integrated CSU Administrative Manual Section 11000](#) “serve as the fundamental system-wide requirements governing the California State University’s (CSU) involvement with the solicitation, acceptance and administration of awards from extramural sponsors for the conduct of research and scholarly activity, and other sponsored activities.” [ICSUAM Section 11001.00]. ICSUAM Section 11002.01. Section 1.5 defines "Recipient" of a sponsored project as the university or auxiliary, but not an individual, department or other constituent unit. Section 1.8 "Sponsored Program Administrator" (SPA) is defined by the Recipient as the entity that will administer the grant or contract.

In consultation with the Associate Vice President (AVP) for Research or his/her designee (hereafter: the term AVP for Research includes his/her designee except where specified), SPAs help the Principal Investigator (PI) address the requirements governing proposal preparation and submission, award negotiation, and post-award management. SPAs assist with identification of possible funding opportunities, management of solicitation of internal applications for limited submission opportunities, and facilitate development of current and pending reports. A SPA negotiates and executes Materials Transfer Agreements, RSCA-related Non-Disclosure Agreements (NDAs), intellectual property (IP), Tech Transfer agreements, and all other legal instruments associated with sponsored programs.

The PI, acting for and on behalf of SJSU, has primary responsibility for the management of his/her sponsored project in accordance with federal, state, University, and sponsor requirements. For every funded award, a single PI must be designated who personally participates in the project to a significant

degree. In circumstances where a sponsor specifies that the PI must be the President, Provost or Dean, the designated PI will serve on behalf of the President, Provost, or Dean.

B. Principal Investigator Eligibility

1. Internal Eligibility

Any award is to the University and the University is thus responsible for ensuring fiscal and other criteria are met. Not only must the PI and any Co-PIs be qualified by education, training and experience in the area in which the funded RSCA or other project is being conducted, additional responsibilities to the institution are required as a PI and Co-PI.

Faculty members at SJSU on the tenure-line having the rank of Assistant, Associate or Full Professor as described in their letter of appointment are eligible to be a PI on sponsored projects. Additionally, Faculty Early Retirement Program (FERP), emeriti, temporary (lecturers), adjunct, visiting, and volunteer faculty, as well as University or auxiliary employees, may serve as PI upon approval. For academic personnel in these groups, the relevant department and/or college will make a recommendation regarding their expertise. The Dean or designee will make a recommendation regarding the stated willingness of the potential PI to comply with administrative and fiduciary requirements. Non-academic personnel will use a parallel recommendation process. The recommendations are forwarded along with a Curriculum Vitae or resume to the AVP for Research for final decision. This approval may provide limited eligibility for a specific proposal or provide status for submissions for a specified period. If the AVP for Research does not approve the request, the dean or unit head will be notified and alternative PI solutions will be discussed.

A Co-PI may be a faculty member, student, or other University personnel.

2. External Eligibility

Certain sponsors or funders may specify PI or co-PI eligibility criteria. Individuals from outside SJSU may serve as co-PI upon approval from the AVP for Research.

C. Externally-Funded Proposal Submission, Review, and Approval

All requests for externally-funded, sponsored projects (including but not limited to letters of intent, contracts or grant proposals that might be construed as a

SJSU commitment to the external party) shall only be submitted to sponsoring agencies with prior written approval of the president and the chief financial officer, or their designees (at SJSU, the AVP for Research and AVP for Finance, respectively).

The designees work closely with the SPA through which external funding proposals are submitted and subsequent awards are received. Other responsibilities of the SPA include: negotiating and accepting awards on behalf of the University and PI (it must be emphasized that all awards are given to the institution and not to the PI); drafting, negotiating and executing subcontracts; representing SJSU and the PI when interacting with sponsors. The Office of Research, SPA, and the PI are jointly responsible for ensuring institutional compliance with Federal and State regulations; sponsor policy and University policy compliance; coordinating pre-award and post-award actions that require either institutional or sponsor prior approval; and reporting responsibilities.

Individual faculty members or non-authorized staff may not negotiate, sign, amend, or accept externally funded contracts and grants on behalf of SJSU or its auxiliaries. As noted above, each contract or grant proposal for extramural funding of RSCA, training, and public service projects, and extramural awards received for such projects, must name an eligible employee of the University or auxiliary to serve as a principal investigator (see Section II B. to review eligibility guidelines).

Funding proposals to support students' RSCA activity must be sponsored by an eligible PI, as the designated PI. A student may be listed as a co-PI, but may not be the point of contact or PI for the project. In general, students who participate in sponsored programs must conform to all rules under the RSCA Student-Advisor Section 1, in addition to the policies listed in Table 1.

D. Principal Investigator Responsibilities

While there may be any number of co-PIs, there must be one individual who is recognized as PI (Lead PI) and is ultimately responsible to:

- Conduct the sponsored project and complete required reports and deliverables in accordance with applicable University, SPA, and sponsor or funder policies and guidelines;
- Ensure that all required University and SPA forms and certifications are completed in a timely manner;
- Conduct the work on the project according to the research protocol or statement of work that was submitted with the original proposal or as

subsequently modified by the sponsor or funder in agreement with the PI and the University/SPA;

- Manage the project budget so that funds are spent in accordance with financial and administrative policies and ensure timely submission of expenses for reimbursement;
- Manage project personnel in compliance with federal and state laws, as well as University and SPA policy;
- Manage the retention and storage of all programmatic technical materials and reports in accordance with sponsor or funder guidelines and requirements.

E. Principal Investigator Performance, Compliance, and Review

Satisfactory progress and review of sponsored programs are determined by the sponsor or funding agency on a project-by-project basis. Any issues or concerns with the performance or regulatory compliance of a PI regarding adherence to University and SPA policies and procedures initially will be addressed with the PI by the SPA in consultation with the AVP for Research. If the PI is non-responsive or if the response does not result in adherence to applicable policies and procedures, the AVP for Research will involve the dean or University official to resolve the circumstances including possible reassignment of PI responsibilities to accomplish compliance.

III. Proprietary and Confidential Information in RSCA

In general, while it is the policy of SJSU that RSCA should be accomplished openly and without prohibitions on the publication and dissemination of the results of academic and RSCA activities, in certain circumstances issues related to confidentiality or proprietary RSCA may take precedence. Proprietary RSCA refers to information or materials that cannot be made public or disseminated without the approval of the entity that owns the proprietary rights to that information or materials. SJSU recognizes that some publishable work can best be accomplished if a University investigator(s) has access to a sponsor's proprietary information or materials. Confidential research is any research that may need be kept non-public, but is not necessarily proprietary (e.g., medical or academic records). Specific situations are governed by complementary policies.

Classified research is covered by SJSU University Policy F69-12. Student theses are governed by SJSU University Policy S14-10. RSCA involving human subjects are governed by SJSU University Policy F17-1. RSCA dissemination related to Intellectual Property and Conflict of Interest is governed by SJSU University Policies S96-11, F98-3, and S99-11. The pursuit of RSCA upholds the principles of Academic Freedom and Professional Responsibility as outlined in SJSU University Policy S99-8.

A. Confidentiality in RSCA Projects

Information gathered and/or generated in RSCA projects may need to be considered as confidential. This information may include, but is not limited to, personal information regarding other RSCA team members, industry partners, and funders, as well as intellectual property, marketing plans, and financial and operational information. Every member of a RSCA team must take all reasonable precautions to ensure that access to this information is restricted to authorized individuals as determined by the PI of the team. RSCA team members may travel with confidential information to a location on campus or outside the campus, but team members must receive permission to do so from the PI. PIs should inform students on the requirements of confidentiality and mentor students as to the appropriate uses and contexts for sharing RSCA information.

B. RSCA-related Non-Disclosure Agreements

The University's mission, the intellectual engagement, and professional growth of the faculty and students should be the principal consideration whenever an NDA is considered for a particular RSCA project.

A RSCA-Related Non-Disclosure Agreement (NDA) is a legally binding agreement that typically:

- Defines and describes information, knowledge, or materials to be shared between or among the parties; and
- Restricts the use and disclosure of the shared information, knowledge, or materials.
- Any RSCA-Related NDA which purports to apply to SJSU or any department or unit thereof (or to commit or bind SJSU) can only be signed by the AVP for Research.
- ***Serves as the starting point to facilitate discussions between entities and may be time limited.***

A RSCA-Related NDA may be proposed when the University is considering entering into a relationship with a company or individual, and/or where there is a need to understand or evaluate each other's technology, research or processes, some of which might be proprietary or otherwise sensitive or confidential in nature. The duration of the RSCA-Related NDA will be negotiated by the RSCA member, the AVP for Research and the outside party.

While NDAs are common in private industry, they may be less appropriate in the University context because they can inhibit RSCA members' and the University's

ability to use information. RSCA-related NDAs must be viewed in conjunction with the California Public Records Act, the McKee Transparency Act² (which applies to all SJSU auxiliary organizations and limits some disclosures) or other laws.

Participation in a RSCA project with a NDA requires both prior consultation between the PI and the RSCA team member and the RSCA team member's free and un-coerced consent.

In general, students should not be asked to sign a RSCA-related NDA (e.g., as part of class projects or academic courses). In exceptional cases where faculty members believe it is necessary for students to enter into an NDA, they must obtain approval from the college dean and the AVP for Research.

NDAs related to an individual's private business or consulting are not subject to SJSU authorization. However, if these individual partnerships develop into a SJSU RSCA activity, a conflict of interest declaration must be disclosed by the individual and managed with the AVP for Research, recognizing a new NDA may be required. (For additional information see the SJSU Conflict of Interest Policy S99-11.)

Any questions regarding proprietary research, confidential research, or the use of RSCA-related NDAs should be referred to the Office of Research.

C. Relationships with External Entities

The following statements establish the basis, under this general policy, on which SJSU will enter into contractual agreements with external entities dealing with RSCA-related NDA. External entities may operate within a proprietary environment while the University functions on the principle of free inquiry and open expression. To serve the common interests of both the University and the external entities, reasonable and workable guidelines for collaborative work must first be established.

1. Generally, SJSU enters into no contractual agreement that restrains it from disclosing the existence of the agreement, the broad nature of the work, or the identity of the sponsor.
2. Normally, SJSU will not enter into any RSCA-Related NDA that permanently bars investigator(s) from publishing or otherwise disclosing the findings publicly. However, the AVP for Research, on behalf of the institution and with the concurrence of the investigator(s), may negotiate

in advance to delay publication and/or presentation to allow sponsors to give input on whether their proprietary information may be revealed, or whether they will exercise their intellectual property rights in agreements with the institution.

3. Exceptions to Section III.C may be granted by the AVP for Research who may rely on the recommendation of an ad hoc committee. The AVP for Research will make an annual report to the President specifying exceptions granted under this provision.
4. This section on “Relationships with External Entities” does not apply to individual, private, consulting projects. These would be projects that are not sponsored projects or do not use university resources or SJSU students.

² McKee Transparency Act 2011.Senate Bill 8. Section 72696.5 (deals with trade secrets not being subject to disclosure and shall be redacted from auxiliary organization records before disclosure).

Table 1: Other University Policies Relating to Research, Scholarship, and Creative Activities

Roles and responsibilities	
S99-8	Academic Freedom and Professional Responsibility
S99-11	Conflict of Interests Policy for Principal Investigators
S05-13	Reporting of Organized Research and Training Units
F69-12	Prohibition of Classified Research; Academic Freedom
F12-5	Responding to Allegations of Research Misconduct

S15-7	Retention, Tenure and Promotion for Regular Faculty Employees: Procedures
S15-8	Retention, Tenure and Promotion for Regular Faculty Employees: Criteria and Standards
Intellectual property	
F98-3	Intellectual/Creative Property
S96-11	Fair Use of Copyrighted Materials; Intellectual Property
Treatment of research subjects	
S14-6	Policy and Assurance for Humane Care and Use of Animals at SJSU
F17-1	Policy for Protection of Human Research Subjects